

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 16211 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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ASHOKBHAI LALLUBHAI PATEL & 6 - Petitioner(s)
Versus
CHAROTAR NAGRIK SAHAKARI BANK LTD.- THR' LIQUIDATOR -
Respondent(s)

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Appearance :

MR BS PATEL for Petitioner(s) : 1 - 7.MRS RANJAN B PATEL for
Petitioner(s) : 1 - 7.

MR AJ YAGNIK for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 06/07/2006

ORAL JUDGMENT

1. Rule. Learned advocate Shri Yagnik waives

service of notice of rule on behalf of the respondents. At the joint request of the learned advocates appearing for the parties, this petition is taken up for final disposal today.

2. The petitioners were directors of a Company called Sardar Sugarcane Growers Pvt. Ltd. The said company had borrowed certain amount from the respondent-Bank. Since the company did not repay the amount, the respondent Bank instituted a summary suit before the Board of Nominees. The same came to be decreed ex parte against the petitioners. The appeal filed by the petitioners also at some stage came to be decided without participation of the petitioners. Eventually, however, the Tribunal entertained the appeal of the petitioners and agreed to remand the proceedings to the Lavad Court by its impugned order dated 29th July 2004 on the condition that all the appellants deposit 35 per cent of the suit amount by 15th September 2004. On the said condition being fulfilled, the decree of the Board of Nominee dated 26th

February 2003 was ordered to be set aside.

3. It may be noted that the Company though the appellant before the Cooperative Tribunal has not challenged this condition. The guarantors have also not challenged the said order or condition contained therein. The present petitioners contending primarily that though they were the Directors had no personal liability, have filed this petition and opposed the condition of depositing 35 per cent of the suit amount jointly fastened on all the appellants before the Cooperative Tribunal.

4. Learned advocate Shri Patel for the petitioners submitted that the petitioners have a very good defence and that to expect that the petitioners pay 35 per cent of the suit amount which is more than one crore of rupees would virtually amount to negating the right of the petitioners to defend themselves before the Board of Nominees. He submitted that the petitioners had never stood as guarantors nor could they be otherwise held personally liable for the dues of the company. Learned advocate Shri Yagnik, however,

disputes the claim. It is neither possible nor necessary for this Court to go into the validity of these rival contentions in view of the discussion which is to follow.

5. I find that the at both stages before the Board of Nominees and before the Tribunal at some stage the proceedings were decided ex parte. The petitioners, therefore not having effectively participated before the Board of Nominee, their claim that they should be granted unconditional leave to defend was never examined. It is, therefore, not possible for this Court to judge these issues for want of sufficient particulars.

6. I find that the petitioners deserve one chance to raise their defence before the Board of Nominees. The petitioners had not remained present before the Board of Nominees and also before the Tribunal at a particular stage. They must therefore pay the cost of the litigation to the respondent. The petitioners will, therefore, pay an amount of Rs.15,000/- (Rupees fifteen thousand) to the respondent. The petitioners shall have an opportunity to defend

themselves before the Board of Nominees and urge that they be given liberty to defend the suit. For that purpose, order passed by the Cooperative Tribunal dated 29th July 2004 qua the petitioners alone is set aside. Further, order passed by the Board of Nominee on 26th February 2003 also qua the petitioners alone is set aside. The petitioners will have a liberty to apply to the Board of Nominees for permitting them to defend the summary suit. Such issue will be decided by the Board of Nominees within a period of two months from the date of receipt of a copy of this order. It is clarified that the order and decree passed by the Board of Nominees as well as the order of the Co-operative Tribunal on 29th July 2004 remained unchanged qua the rest of the parties to the said litigation except the petitioners herein.

7. With the above clarification, the petition is disposed of. Rule is made absolute to the above extent.

(Akil Kureshi, J.)

(vjn)